



1 SHELTON L. FREEMAN (AZ #009687) Dated: August 11, 2010  
2 NANCY J. MARCH (AZ #012802)  
3 DECONCINI McDONALD YETWIN & LACY, P.C.  
4 6909 East Main Street  
5 Scottsdale, Arizona 85251

GEORGE B. NIELSEN, JR  
U.S. Bankruptcy Judge

6 Ph: (480) 398-3100  
7 Fax: (480) 398-3101  
8 E-mail: [tfreeman@lawdmyl.com](mailto:tfreeman@lawdmyl.com)  
9 E-mail: [nmarch@dmyl.com](mailto:nmarch@dmyl.com)

10 Attorneys for Pearland Westside Associates, Ltd.

11 **IN THE UNITED STATES BANKRUPTCY COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:  
14 PEARLAND WESTSIDE  
15 ASSOCIATES LIMITED,  
16 Debtor.

In Proceedings Under Chapter 11  
Case No. 2:09-bk-09407-GBN

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER CONFIRMING  
DEBTOR'S PLAN OF  
REORGANIZATION, AS MODIFIED**

17  
18  
19  
20 This matter came before the Court on July 30, 2010, at 9:30 a.m., for a  
21 hearing on confirmation (the "Plan Confirmation Hearing") of the Debtor's First  
22 Amended Plan of Reorganization Dated March 23, 2010, in the form filed with the  
23 Court on March 24, 2010 [Docket No. 138] (the "Plan"), proposed by Pearland  
24 Westside Associates Limited (the "Debtor").

25  
26 REMAINDER OF THIS PAGE IS  
27 INTENTIONALLY LEFT BLANK  
28

1 **I. BACKGROUND.**

2 1. The Debtor commenced this case by filing a voluntary petition  
3 for relief under Chapter 11 of the Bankruptcy Code<sup>1</sup> on May 5, 2009 (the "Petition  
4 Date") in the United States Bankruptcy Court for the District of Arizona (the  
5 "Court"). The Debtor operates and manages that certain retail center located at  
6 5040 West Broadway, Pearland, Texas (the "Project") as a debtor-in-possession  
7 pursuant to 11 U.S.C. §§ 1107 and 1108. No Official Committee of Unsecured  
8 Creditors has been appointed in this case.

9 2. On April 22, 2010, the Debtor filed the First Amended Disclosure  
10 Statement For Debtor's Plan Of Reorganization Dated March 23, 2010 As Modified  
11 April 22, 2010 [Docket No. 144] (the "Disclosure Statement"), describing the Plan.  
12 On March 26, 2010, the Court entered its Order Setting Hearing On Amended  
13 Disclosure Statement [Docket No. 141] (the "Notice and Order"), due and  
14 appropriate notice of which was given pursuant to the Bankruptcy Code and  
15 applicable Bankruptcy Rules [Docket No. 142]. The Notice and Order provided,  
16 among other things, as follows:  
17

18 The Debtor has filed a list of creditors pursuant to  
19 Bankruptcy Rule 1007. Unless previously ordered  
20 otherwise by the Court, any creditor holding a listed claim  
21 which is not listed as disputed, contingent, or unliquidated  
22 as to amount, may, but need not, file a proof of claim in  
23 this case. Creditors whose claims are not listed or whose  
24 claims are listed as disputed, contingent or unliquidated  
25 as to amount and who desire to participate in the case or  
26 share in any distribution must file their proof of claim prior  
27 to the approval of the First Amended Disclosure  
28 Statement, which date is hereby fixed as to the last day  
for filing a proof of claim unless a different last date to file  
claims has been previously ordered. Any creditor who  
desires to rely on this list has the responsibility for  
determining that he is accurately listed.

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

1           3.     The Court considered the Disclosure Statement and conducted  
2 a hearing on April 22, 2010. The Court thereafter entered an order approving the  
3 Disclosure Statement and setting a confirmation hearing on the Plan [Docket No.  
4 146] (the "Disclosure Statement Order").

5           4.     Under the Plan, holders of Claims and Interests are classified  
6 into seven (7) Classes. Class I is not impaired, and is deemed to have accepted  
7 the Plan. Class II, Secured Tax Claims, has no members, and is therefore an  
8 empty Class (and further would not have been impaired under the Plan). Class VII  
9 receives nothing under the Plan and is deemed to have rejected the Plan.

10          5.     The Debtor mailed copies of the Disclosure Statement Order,  
11 the Disclosure Statement, the Plan, and ballots to be used by holders of Claims in  
12 Classes III, IV, V, and VI under the Plan to all parties required to receive the  
13 solicitation package under the Bankruptcy Rules. Such mailing provided proper,  
14 timely, adequate and sufficient notice of the hearing on confirmation of the Plan  
15 [Docket No. 147] and properly solicited votes on the Plan pursuant to and as  
16 required by the Bankruptcy Code and applicable Bankruptcy Rules.

17          6.     The hearing on confirmation of the Plan was originally scheduled  
18 for May 27, 2010, and was continued from time to time at the request of the Debtor,  
19 without objection from its secured lender, LBUBS 2002-C2 West Broadway, LLC  
20 (the "Lender"). Such continuances were noticed by the Debtor to all creditors and  
21 parties in interest. See Certificates of Service at Docket Nos. 153 and 166.

22          7.     Voting on the Plan concluded on May 20, 2010. See Ballot  
23 Report for Plan of Reorganization [Docket No. 169] (the "Ballot Report"), filed by  
24 the Debtor pursuant to Local Bankruptcy Rule 3018. The Ballot Report indicates  
25 that Classes IV, V, and VI voted to accept the Plan. Class III, comprising the  
26 Secured Claim of Lender, voted to reject the Plan. At the Plan Confirmation  
27 Hearing, counsel for the Lender asked that the Lender be permitted to change its  
28

1 vote from a rejection to an acceptance on the Plan pursuant to the terms and  
2 conditions set forth by the Lender's counsel on the record at the Plan Confirmation  
3 Hearing.

4           8. The Court received one objection to confirmation of the Plan,  
5 filed by the Office of the United States Trustee [Docket No. 154] (the "Objection").  
6 The Debtor subsequently filed its Response Of Debtor To United States Trustee's  
7 Objection To Debtor's First Amended Plan Of Reorganization Through Non-  
8 Adverse Modification To Plan [Docket No. 170] (the "Response"). The Response  
9 provides that the Debtor deletes Section 14.4 from the Plan. Thereafter, the United  
10 States Trustee conditionally withdrew its Objection to confirmation of the Plan  
11 [Docket No. 171] (the "Conditional Withdrawal").

12           9. The Plan provides that the Plan will be implemented through a  
13 loan modification between the Debtor and the Lender. Accordingly, and prior to the  
14 Plan Confirmation Hearing, the Debtor filed its Notice of Submitting Proposed Loan  
15 Documents Between Debtor, Lender and Other Parties [Docket No. 176] with the  
16 Court (the "Loan Modification Notice"), attaching the proposed Loan Modification  
17 Agreement between the Lender and the Debtor and three agreements associated  
18 therewith (together, the "Loan Modification Documents"). The Loan Modification  
19 Documents provide substantially all of the final terms and conditions pursuant to  
20 which the Lender agreed to vote in favor of the Plan and modify its loan to the  
21 Debtor.  
22

23           10. Prior to the Plan Confirmation Hearing, the Debtor also filed the  
24 Declaration of Nancy J. March [Docket No. 175] (the "March Declaration"), with  
25 respect to the Ballot Report and Claims filed against the Estate, and the  
26 Declaration of Raymond G. Tiedje [Docket No. 177] (the "Tiedje Declaration"),  
27 which, among other things, set forth the Debtor's compliance with the plan  
28 confirmation requirements of 11 U.S.C. § 1129, and affirmed the Debtor's ability to

1 perform in accordance with an amended budget attached to the Notice of Filing  
2 Exhibit to Declaration of Raymond G. Tiedje (the "Notice of Exhibit") filed on July  
3 30, 2010 [Docket No. 178] (the "Amended Budget"). The Amended Budget is  
4 incorporated into, and modifies the Plan, and any and all references to "the Plan"  
5 set forth in this Confirmation Order shall be deemed to include and incorporate the  
6 Amended Budget.

7 11. The Court conducted the Plan Confirmation Hearing on July 30,  
8 2010, at which time counsel for the Debtor described, among other things, the Loan  
9 Modification Documents that will form the basis for implementing the Plan, and the  
10 Debtor's compliance with the plan confirmation standards set forth in 11 U.S.C.  
11 § 1129.

12 12. The Court considered the pleadings and papers filed by the  
13 Debtor, creditors and parties in interest, including but not limited to the Tiedje  
14 Declaration, the March Declaration, the Objection, the Response, the Conditional  
15 Withdrawal, the Ballot Report, the Loan Modification Documents, and the Plan and  
16 Disclosure Statement. The Court further considered all arguments and statements  
17 made of record by respective counsel for the Debtor, the Lender, and the Office of  
18 the United States Trustee at the Plan Confirmation Hearing, as well as all other  
19 pleadings filed in the Case and all other matters brought before the Court in prior  
20 hearings in this Case that constitute the record of this Case.

21 13. Based on the foregoing, and the entire record before the Court,  
22 the Court makes the following findings of fact and conclusions law, and issues this  
23 Order for the reasons stated in this Order and for any other reasons stated by the  
24 Court on the record at the Plan Confirmation Hearing:  
25

26 **II. FINDINGS OF FACT AND CONCLUSION OF LAW.**

27 Where appropriate, findings of fact shall be construed as conclusions  
28 of law and conclusions of law shall be construed as findings of fact.

1           **A. Jurisdiction and Venue.**

2           14. This is a “core” proceeding within the meaning of 28 U.S.C.  
3 § 157(b)(2)(A), (L) and (O), and the Court has jurisdiction to determine whether the  
4 Plan should be confirmed, overrule objections to confirmation of the Plan, confirm  
5 the Plan, enter this Confirmation Order, and administer and enforce this  
6 Confirmation Order pursuant to 28 U.S.C. §§ 157 and 1334. This matter arises  
7 under the Bankruptcy Code, and jurisdiction is vested in this Court to enter a final  
8 order by virtue of 28 U.S.C. § 1334(a) and (b), and 28 U.S.C. §§ 151, 157(a) and  
9 (b)(1). Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409. The  
10 Court’s findings of fact and conclusions of law are being entered under Rules 7052  
11 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

12           15. The Court’s retention of jurisdiction as set forth in Article XI of  
13 the Plan comports with 28 U.S.C. § 157.

14           16. The Court takes judicial notice of the docket in this Case  
15 maintained by the Clerk of the Court and/or its duly appointed agent, including all  
16 pleadings or other documents filed, all orders entered, and all evidence and  
17 arguments made, proffered or adduced at the hearings held before the Court  
18 during this Case, including the hearing to consider the adequacy of the Disclosure  
19 Statement and the Plan Confirmation Hearing.

20           **B. Satisfaction of Relevant Legal Standards.**

21           17. In accordance with Bankruptcy Code § 1123(a), the Plan:  
22 (a) designates classes of Claims and Equity Interests, other than claims of a kind  
23 specified in Bankruptcy Code §§ 507(a)(1), 507(a)(2) and 507(a)(8), and the  
24 classification complies with Bankruptcy Code § 1122; (b) specifies Classes of  
25 Claims and Interests that are impaired under the Plan; (c) specifies the treatment of  
26 Classes of Claims and Interests that are impaired under the Plan; (d) provides the  
27 same treatment for each Claim or Interest of a particular Class, unless the holder of  
28

1 a particular Claim or Interest agrees to less favorable treatment of the particular  
2 Claim or Interest; (e) provides for adequate means for the Plan's implementation  
3 and (f) contains only provisions that are consistent with the interests of creditors  
4 and equity security holders and with public policy.

5 18. As permitted by Bankruptcy Code § 1123(b), the Plan:  
6 (a) impairs or leaves unimpaired Classes of Claims and Interests; (b) provides for  
7 the assumption, rejection, or assumption and assignment of the Debtor's executory  
8 contracts and unexpired leases; and (c) includes other appropriate provisions not  
9 inconsistent with the applicable provisions of the Bankruptcy Code.

10 19. In accordance with Bankruptcy Rule 2002, the Court finds and  
11 concludes that adequate notice of the time for filing objections to confirmation of  
12 the Plan and adequate notice of the Plan Confirmation Hearing were provided to  
13 parties in interest. No additional notice of the Plan Confirmation Hearing or the  
14 opportunity to be heard with respect to confirmation of the Plan is required or  
15 appropriate under applicable Bankruptcy Rules.

16 20. With respect to all Classes under the Plan: (a) Class I is not  
17 impaired and is deemed to have accepted the Plan without voting under  
18 Bankruptcy Code § 1126(f); (b) Class II is an empty Class, and is hereby deleted  
19 from the Plan; (c) following the verbal acceptance of the Plan at the Plan  
20 Confirmation Hearing by the Lender (the holder of the Class III Claim) pursuant to  
21 the terms and conditions set forth on the record by its counsel at the Plan  
22 Confirmation Hearing, Classes III, IV, V, and VI have voted to accept the Plan by  
23 satisfying the voting requirements in Bankruptcy Code § 1126(c); and (d) Class VII  
24 is deemed to have rejected the Plan without voting under Bankruptcy Code  
25 § 1126(f).

26 21. All of the applicable requirements of 11 U.S.C. § 1129(a) have  
27 been satisfied concerning the Debtor and the Plan.  
28

1           22. In particular, the Court is satisfied that, with respect to each  
2 impaired Class of Claims or Interests, each holder of a Claim or Interest has either  
3 consented to the treatment proposed in the Plan (as modified by the Loan  
4 Modification Documents), or will receive or retain under the Plan on account of  
5 such Claim or Interest property of a value, as of the Effective Date of the Plan, that  
6 is not less than the amount that such holder would so receive or retain if Debtor  
7 were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

8           23. By virtue of the Ballot Report as filed with the Court, and as  
9 more fully described in the March Declaration, each impaired Class under the Plan  
10 accepted the Plan, except as to Class III, which conditionally accepted the Plan as  
11 set forth on the record at the Plan Confirmation Hearing. All creditors are to be  
12 paid in full under the Plan, except as to Class III, which accepted the Plan pursuant  
13 to the terms and conditions set forth by the Lender's counsel at the Plan  
14 Confirmation Hearing.

15           **C. Additional Plan Provisions.**

16           24. The Debtor is authorized to assume all executory contracts,  
17 unexpired leases, and other obligations listed on Exhibit "C" to the Plan, as a  
18 reasonable exercise of the Debtor's business judgment and in the best interests of  
19 the Debtor and the Estate. Claims arising from the Debtor's rejection of an  
20 Executory Contract or unexpired lease that occurred prior to the Claim Bar Date  
21 were due on or before the Claim Bar Date.

22           25. The Court approved the Debtor's rejection of an executory  
23 contract with Kennedy Roofing by an Order entered on July 29, 2009 [Docket No.  
24 66]. Because the Debtor's contract with Kennedy Roofing was rejected prior to the  
25 Claim Bar Date and the Debtor did not reach any other resolution with Kennedy  
26 Roofing prior to the Plan Confirmation Hearing, pursuant to Section 3.2 of the Plan,  
27  
28



1 any claim of Kennedy Roofing for damages arising from the rejection of its contract  
2 by the Debtor was due on or before the approval of the Disclosure Statement.

3           26. In accordance with § 1123(b)(3)(B) of the Bankruptcy Code, and  
4 except with respect to any claims and causes of action against the Lender and/or  
5 offsets against the Allowed LBUBS Secured Claim, all of which are being released  
6 pursuant to the Plan, the Reorganized Debtor shall retain and may (but shall not be  
7 required to) investigate and prosecute all of the Debtor's claims and causes of  
8 action (if any).

9           27. Pursuant to § 1146 of the Bankruptcy Code, (a) the issuance,  
10 transfer or exchange of any securities, instruments, or documents, (b) the creation  
11 of any lien, mortgage, deed of trust or other security interest, (c) the making or  
12 assignment of any lease or sublease or the making or delivery of any deed or other  
13 instrument of transfer under, pursuant to, in furtherance of, or in connection with  
14 the Plan, including, without limitation, the Loan Modification Documents and any  
15 other deeds, bills of sale or assignments executed in connection with any of the  
16 transactions contemplated under the Plan or the reinvesting, transfer or sale of any  
17 real or personal property of Debtor pursuant to, in implementation of, or as  
18 contemplated in the Plan, and (d) the issuance, renewal, modification or securing of  
19 indebtedness by such means, and the making, delivery or recording of any deed or  
20 other instrument of transfer under, in furtherance of, or in connection with, the Plan,  
21 including, without limitation, the Loan Modification Documents and this  
22 Confirmation Order, shall not be subject to any document recording tax, stamp tax,  
23 conveyance fee or other similar tax, mortgage recording tax or other similar tax or  
24 governmental assessment. Consistent with the foregoing, each recorder of deeds  
25 or similar official for any county, city or governmental unit in which any instrument  
26 hereunder is to be recorded shall, pursuant to this Confirmation Order, be ordered  
27 and directed to accept such instrument without requiring the payment of any filing  
28

1 fees, documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax  
2 or similar tax.

3           28. The Plan will be effectuated through the refinancing of the  
4 Debtor's existing secured debt with Lender through a loan modification entered into  
5 between the Reorganized Debtor, the Lender, and the Guarantor (as defined in the  
6 Loan Modification Documents), and a release of any and all potential claims  
7 against the Lender, among others, as further disclosed in the Plan (together, the  
8 "Lender Claims"). Drafts of the relevant Loan Modification Agreements were  
9 attached to the Loan Modification Notice and filed with the Bankruptcy Court prior  
10 to the Plan Confirmation Hearing and are fully incorporated herein by this  
11 reference. The Loan Modification Agreements and the release of Lender Claims  
12 are an integral part of the Plan and are reasonable and appropriate under the  
13 circumstances. Upon the Effective Date of the Plan, persons, including the Lender,  
14 will be acting in reliance on the Loan Modification Agreements and the Plan in  
15 taking and refraining from taking actions and enforcing and refraining from  
16 enforcing certain rights.  
17

18           29. The Lender negotiated with the Debtor for acceptable treatment  
19 of its Secured Claim, which includes an Allowed Claim under Class III of the Plan.  
20 The Lender's Allowed Secured Claim will be treated as provided for in Section 4.3  
21 of the Plan, as further modified by the Loan Modification Documents.

22           30. Without further application to or order of this Court, or need for  
23 further corporate action, the Reorganized Debtor is authorized to sign the Loan  
24 Modification Documents, open such bank accounts, and take such other actions as  
25 are reasonably required to procure the loan modification as contemplated by the  
26 Plan and provided for under the Loan Modification Documents. The Reorganized  
27 Debtor is further authorized to do and perform, or cause to be done and performed,  
28 all such further acts and things, and shall execute and deliver all such other

1 agreements, certificates, instruments and documents, as any other party may  
2 reasonably request in order to carry out the intent and accomplish the purposes of  
3 the Loan Modification Documents, the Plan and the consummation of the  
4 transactions contemplated thereby.

5           31. The Loan Modification Documents may be modified, amended,  
6 or supplemented by the parties thereto, in a writing signed by all parties, and in  
7 accordance with the terms thereof, without further order of the Bankruptcy Court,  
8 provided that any such modification, amendment or supplement complies with  
9 Section 1127 or otherwise, as applicable, of the Bankruptcy Code, and the  
10 Bankruptcy Rules.

11           32. Entry of this Confirmation Order makes valid and enforceable  
12 each provision of the Plan (as modified in this Confirmation Order and the Loan  
13 Modification Documents, and other than Section 14.4, which has been deleted from  
14 the Plan), in accordance with its terms.

15  
16 **III     ORDER**

17           In light of the foregoing Findings of Fact and Conclusions of Law, IT IS  
18 ORDERED, ADJUDGED, and DECREED:

19           33. The Plan, as modified by this Order (with Section 14.4 having  
20 been deleted), including the release of Lender Claims set forth therein, is hereby  
21 approved and confirmed. The terms of each of the Loan Modification Agreements  
22 and all exhibits and addendums thereto, are approved, and are incorporated by  
23 reference into, and are, an integral part of the Plan.

24           34. All objections to confirmation of the Plan, whether filed with the  
25 Court or otherwise, have been withdrawn, waived or settled.

26           35. As evidenced by the Certificates of Service previously filed with  
27 the Court, and based upon representations of counsel at the Plan Confirmation  
28 Hearing: (i) proper, timely, adequate and sufficient notice of the Plan Confirmation

1 Hearing and the deadline for filing and serving objections to the Plan has been  
2 provided; (ii) such notice constitutes due and proper notice for purposes of § 102(1)  
3 and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018,  
4 6006, 9006 and 9014 and all applicable Sections of the Local Rules of Bankruptcy  
5 Procedure for the District of Arizona; (iii) such notice was reasonable, sufficient and  
6 appropriate under the circumstances and is hereby approved; and (iv) no other or  
7 further notice of the Plan Confirmation Hearing, the deadline for filing and serving  
8 objections to the Plan, or the entry of this Confirmation Order is required.

9           36. Notwithstanding Bankruptcy Rule 3020(e) and any otherwise  
10 applicable law, immediately on the entry of this Order, the terms of the Plan, as  
11 modified by this Confirmation Order and the Loan Modification Documents, and this  
12 Order will be binding on and inure to the benefit of the Reorganized Debtor, all  
13 holders of Claims or Interests, whether or not the Claims or Interests of such  
14 holders are impaired under the Plan, whether or not such holders have filed Proofs  
15 of Claims or proofs of Interests in the case, and all other persons or entities, and  
16 the respective successors and assigns of all the foregoing. Each Plan term and  
17 provision, as it may be interpreted in accordance with the Plan, is valid and  
18 enforceable under its terms.

19           37. Section 14.4 is deleted from the Plan.

20           38. Any creditor with a Claim that was listed on the Debtor's  
21 Bankruptcy Schedules as disputed, unliquidated, or contingent and who did not file  
22 proof of his, her or its Claim shall not be entitled to distribution under the Debtor's  
23 Plan and is hereby enjoined and forever barred from attempting to collect such  
24 Claim from the Debtor or otherwise from or in connection with the Retail Center.

25           39. All applications for approval and payment of Class I  
26 Administrative Claims arising after the bar date for Administrative Claims, and  
27 Claims for Chapter 11 Professionals employed pursuant to Section 327 of the  
28

1 Bankruptcy Code, shall be filed on the first Business Day that occurs on or after the  
2 30<sup>th</sup> day after the Effective Date and served on the Reorganized Debtor as set forth  
3 in the Plan. Any such Claim that is not served and filed within this time period shall  
4 be discharged and forever barred. Objections to any application for allowance of  
5 an Administrative Claim must be filed within 21 days after the filing thereof.

6           40. All Claims arising from the rejection of any Executory Contract or  
7 unexpired lease after the Claim Bar Date must be filed with the Court no later than  
8 30 days after the Effective Date of the Plan. Any such Claim not filed within that  
9 time is forever barred. Any Claim arising from the rejection of an Executory  
10 Contract before the Claim Bar Date that was not filed on or before the Claim Bar  
11 Date is forever barred and will not be entitled to distribution under the Debtor's  
12 Plan.

13           41. The Reorganized Debtor, its officers and all other necessary  
14 parties are authorized and empowered to do the following acts in the name and on  
15 behalf of the Reorganized Debtor and without further notice or application to or  
16 order of the Court: (a) obtain the loan modification described in the Plan; and (b)  
17 execute, deliver, file, record, and perform under the Loan Modification Documents  
18 and such other documents, agreements, resolutions as may be necessary to  
19 consummate the Loan Modification Documents; and (c) perform any act that is  
20 necessary, desirable or required for the consummation of the Plan or the Loan  
21 Modification Documents, regardless of whether such actions or documents  
22 necessitated by such actions are specifically referred to in the Plan or this Order.  
23 To the extent that, under applicable non-bankruptcy law, any of these actions  
24 otherwise would require the consent or approval of any partner of the Debtor, or  
25 any officer or board of directors of the Debtor, this Order constitutes such consent  
26 and approval.  
27  
28

1           42. This Court shall retain jurisdiction in accordance with the terms  
2 of Article XII of the Plan and to adjudicate any unresolved issues described and  
3 reserved in this Order. Such retention of jurisdiction shall not, and does not, affect  
4 the finality of this Order. The Court expressly determines that there is no just  
5 reason for delay and expressly directs the entry of this Order as a final order.

6           43. To the extent there is any inconsistency between the Disclosure  
7 Statement (and any prior version thereof) and the Plan, the terms of the Plan shall  
8 govern. To the extent that there is any inconsistency between the terms of the  
9 Plan and the Loan Modification Documents, the terms of the Loan Modification  
10 Documents shall govern. To the extent that there is an inconsistency between the  
11 terms of the Plan and this Confirmation Order, the terms of this Confirmation Order  
12 shall govern.  
13

14           DATED and SIGNED above.

15  
16  
17 APPROVED AS TO FORM:

18 BALLARD SPAHR LLP  
19 2029 Century Park East, Suite 800  
20 Los Angeles, California 90067

21 By     /s/ Rebecca J. Winthrop  
22 Rebecca J. Winthrop  
23 Attorneys for LBUBS 2002-C2 West  
24 Broadway, LLC  
25  
26  
27  
28